

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**HARDY BILLINGTON, ET AL.,
APPELLANTS
vs.**

**ROBIN CARNAHAN,
RESPONDENT**

DOCKET NUMBER WD75602

DATE: SEPTEMBER 17, 2012

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Special Division: James M. Smart, Jr., P.J., Joseph M. Ellis and Karen King Mitchell, JJ.

Attorneys:

Clayton J. Callen, for Appellants

James R. Layton, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

HARDY BILLINGTON, ET AL., APPELLANTS

v.

ROBIN CARNAHAN, RESPONDENT

WD75602

Cole County, Missouri

Before Special Division Judges: James M. Smart, Jr., P.J., Joseph M. Ellis and Karen King Mitchell, JJ.

On May 10, 2012, the Missouri general assembly approved Senate Joint Resolution No. 51 ("SJR 51"), now officially designated "Constitutional Amendment 3," resolving to submit to the voters a referendum repealing sections 25(a) and 25(d) of article V of the Missouri Constitution and replacing them with new language. Because SJR 51 did not include an official summary statement for the referendum, the Secretary of State drafted a summary statement, which was approved by the Attorney General and was then certified as part of the official ballot title.

Under the authority of § 116.190, a group of Missouri citizens ("Appellants") filed a petition in the Circuit Court of Cole County, challenging the language of the official ballot title as insufficient and unfair and requesting a different summary statement. After cross-motions for judgment on the pleadings were filed by Appellants and the Secretary of State, the circuit court entered its judgment in favor of the Secretary of State. Appellants appeal from that judgment, claiming that the Secretary of State's summary is insufficient and unfair.

AFFIRMED AS MODIFIED

Special Division holds:

(1) The trial court did not err in granting the Secretary of State's motion for judgment on the pleadings because Appellants failed to meet their burden of establishing that the summary, as prepared by the Secretary of State, was either unfair or insufficient.

(2) We cannot say that the summary is insufficient or unfair for failing to identify reducing the influence of lawyers as a legal effect of the amendment when the amendment increases the number of lawyers who may serve on the Commission from a maximum of four to a maximum of seven voting members while reducing the minimum number of voting members required to be attorneys by one. The Secretary's language, focusing as it does on the increase in the

Governor's authority, cannot be deemed insufficient or unfair in failing to reference a reduction in the number of lawyers required to serve on the Commission.

(3) The summary statement for Amendment 3 is not unfair or insufficient solely on the basis that it does not include every possible consequence of the amendment within the fifty-word summary.

(4) If enacted, Amendment 3 will change the judicial selection process under the nonpartisan court plan. While Appellants believe the Secretary could have explained that more artfully, that is not the standard nor does it mean that the summary statement is unfair or partial in explaining the purpose of the amendment.

(5) The circuit court's judgment is amended to certify the summary statement portion of the ballot title to the Secretary of State as is required pursuant to § 116.190.4.

Judge Smart's concurring opinion holds:

Judge Smart concurs in separate opinion, noting factors supporting the conclusion that the ballot summary complies with law. The opinion comments on the fact that when the court plan was adopted in 1940, the plan was based on a theory of checks and balances among lawyers, layperson, judiciary, and governor. The summary in this case properly communicates that the changes authorized by the proposed amendment are likely to significantly impact the traditional balances. Whether it is time to impact those balances is for the electorate to determine, but the electorate is to be informed by a very short ballot summary that is not unfair or insufficient.

Opinion by Joseph M. Ellis, Judge

Date: SEPTEMBER 17, 2012

<p>This summary is UNOFFICIAL and should not be quoted or cited.</p>
